



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

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Mr. A. Alexander, P.E.  
District Director  
Central District  
Florida Department of Environmental Regulation  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

RE: Chevron Chemical Company Site  
Orlando, Florida

Dear Mr. Alexander:

I am writing in regard to the activities of the Chevron Chemical Company (Chevron) at the above referenced Site. As you are aware, Chevron is arranging for the excavation, transportation, and off-site disposal of contaminated soils found on the Site. Your office, on behalf of the Florida Department of Environmental Regulation (FDER), has recently indicated to Chevron and the United States Environmental Protection Agency (EPA) that certain aspects of the work at the Site may not proceed without the approval of FDER. As more fully set forth below, EPA strongly disagrees with that position.

From 1950 to 1976, Chevron used the Site as a pesticide formulation plant. After sale of the Site in 1976, the Site was used as a truck storage and maintenance yard, and since 1987 has been the location of various small businesses. In order to respond to soil contamination at the Site, EPA, Chevron and the current property owner entered into an Administrative Order on Consent (AOC) on May 15, 1990.

The AOC focuses primarily on soil contamination and requires Chevron to arrange for the transportation and disposal of contaminated soils identified at the Site. On September 12, 1991, EPA approved the workplan (Removal Action Plan, or "RAP") under which Chevron will implement the soil cleanup. As part of the soil excavation, the approved RAP calls for the excavation of contaminated soil down into the groundwater table at one specific area on the Site. The RAP also calls for Chevron to dewater this limited area, to treat all collected water in an onsite temporary treatment system, and to dispose of the treated water in an onsite exfiltration trench. The RAP requires that Chevron treat the water prior to discharge to meet national and state primary and secondary drinking water standards. The RAP does not provide for any groundwater collection or treatment beyond that necessary to implement the soil clean-up in this one limited area.

In a letter dated October 30, 1991, from FDER to Chevron, FDER stated that Chevron would not be allowed to discharge the collected water as proposed in the RAP "without obtaining an Industrial Wastewater Treatment/Disposal Permit, and Air Permit (if needed), or without obtaining approval through a Department Consent Order in lieu of these permits." In subsequent correspondence and conversations with EPA, FDER has indicated that its primary concern is to ensure the protectiveness of the actions being conducted by Chevron, rather than the issuance of permits or orders per se. In particular, your staff seemed most concerned with the review and approval of the water treatment system, the possibility of air emissions from that system, the selected location of the exfiltration trench, and the ability of that trench to handle the expected volumes of water.

The soil clean-up at the Site is being conducted as a "removal" as defined in Section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (CERCLA), 42 U.S.C. § 9601(23). This removal is governed by the provisions of CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300 et seq. Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e) provides:

No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is carried out in compliance with this section. (emphasis added)

Both the water treatment system and the exfiltration trench are located entirely onsite and are integral parts of the removal. Therefore, Section 121(e) of CERCLA specifically precludes Chevron or EPA from having to obtain any permit prior to conducting work at the Site. This includes any state permit for the design, construction or operation of the water treatment system and the exfiltration trench. Similarly, EPA does not have to condition those aspects of the work upon Chevron's entry into a Consent Order with FDER, as such a Consent Order would be the functional equivalent of a permit.

Section 121(d) of CERCLA, 42 U.S.C. § 9621(d), requires that EPA's remedial actions attain a degree of cleanup which attains applicable or relevant and appropriate requirements ("ARARs") under federal and state environmental laws. As stated above, this clean-up is being conducted as a removal and not a remedial action. Although Section 121(d) does not require that removal actions attain ARARs, EPA's policy is that removal actions will attain ARARs to the extent practicable. See 40 C.F.R. § 300.415(i). The NCP makes it clear, however, that a response action, including a removal, must satisfy only those ARARs which impose "substantive", as opposed to "administrative", requirements. The NCP states, in pertinent part:

Examples of substantive ARARs include acceptable concentrations for specific chemicals under the Safe Drinking Water Act which define cleanup levels for groundwater that is or may be used for drinking water....

Requirements which do not in and of themselves define a level or standard of control are considered administrative. Administrative requirements include the approval of, or consultation with, administrative bodies, issuance of permits, documentation, and, generally, reporting and recordkeeping. The Superfund program imposes its own reporting and recordkeeping requirements to ensure that substantive levels or standards of control are being met. Compliance with similar requirements of other environmental statutes would be redundant and unduly burdensome. (emphasis added)

This interpretation is consistent with CERCLA section 121(e) which exempts on-site activities from obtaining permits.....

53 Fed. Reg. 51443, (December 21, 1988).

Thus, CERCLA and the NCP clearly do not require EPA or Chevron to obtain state permits or state approval of work plans or designs prior to conducting this removal action. Despite this, the work must still, to the extent practicable, satisfy substantive state standards. In regard to the water being discharged, EPA believes it has satisfied this burden by requiring that Chevron treat the collected water to federal and state primary and secondary drinking water standards prior to discharge. If the FDER has more stringent treatment standards, please have your staff forward those standards to EPA within ten (10) days of receipt of this letter so that those standards may be incorporated into Chevron's technical specifications.

EPA also believes that the water treatment system will not result in air emissions of concern. In telephone conversations over the last several weeks, EPA personnel have requested your staff's input concerning the appropriate state ARARs, if any, for air emissions. To date, your staff has failed to provide that information. As the water treatment unit will not be operated yet for several weeks, we have sufficient time to ensure that the appropriate air limitations are identified and met. As with the water standards, please have your staff forward those to EPA within ten (10) days of receipt of this letter.

Since EPA first visited the Site in December 1989, EPA has kept FDER fully informed of all activities concerning the Site. EPA forwarded a copy of the AOC to the FDER Hazardous Waste Cleanup Section in Tallahassee in August 1990. After consulting with FDER's Orlando district office, EPA forwarded its proposed cleanup

goals to Tallahassee in April 1990. At the request of EPA's On-Scene Coordinator (OSC), Chevron representatives met with your staff in May 1991 to personally update your staff on activities at the Site. In August, 1991, again at the request of EPA's OSC, Chevron forwarded a copy of the approved RAP to your staff. Your staff has thus had ample opportunity to provide information concerning the proper state ARARs in a timely fashion.

EPA places the burden on Chevron to satisfy the ARARs for this Site. Through its OSC and contractors, EPA will oversee all aspects of the work at the Site to ensure that Chevron in fact satisfies those ARARs. At this time, EPA is satisfied that the approach being taken by Chevron will comply with those ARARs. If it becomes evident in the future that Chevron's approach will in fact not satisfy the ARARs, EPA will require Chevron to modify its activities at the Site.

As stated above, Chevron is conducting the work at the Site as a short term removal action. The work focuses on soil removal, and requires groundwater collection, treatment and disposal only as an incidental part of the dewatering and excavation of contaminated soil. The AOC does not contemplate any groundwater collection, treatment or discharge beyond that necessary to implement the soil clean-up. However, EPA understands that the draft Consent Order which FDER sent to Chevron includes both short term requirements, similar in scope to the removal which Chevron is conducting under EPA's AOC, as well as long term requirements for more complete remediation of the Site. Those long term requirements are similar to those which CERCLA imposes on Sites included on the National Priorities List (NPL) and would be considered remedial actions. As EPA has not yet included this Site on the NPL, the conduct by Chevron of removal activities in no way conflicts with any State authority to compel long term remediation work, including any groundwater remediation work or additional soil work beyond the scope of the removal.

I hope that this letter clarifies any misunderstanding between EPA and FDER concerning the current and future activities at this Site. Please contact Larry Brannen at (404) 347-3931 or Charles V. Mikalian at (404) 347-2641 ext. 2268 if you have further questions or comments.

Sincerely yours,



Donald J. Guinyard  
Director  
Waste Management Division

cc: John Rudell, FDER